

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) UNITED STATES EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
(2) TERRY FITZGERALD,	)	
(3) SUSAN SOLIS, and	)	
(4) ALISHA WILLIAMS,	)	
	)	
Plaintiff Intervenors,	)	No. CIV-04-1078
	)	
vs.	)	
	)	
(1) WESTPHALEN INSURANCE SERVICES, INC., and	)	
(2) GARY WESTPHALEN, Individually,	)	
	)	
Defendants.	)	

**PLAINTIFF INTERVENORS' COMPLAINT**

COME NOW Terry FITZGERALD, Susan SOLIS, and Alisha WILLIAMS (hereafter collectively "Plaintiff Intervenors") for their causes of action in the above-styled and numbered cause, and respectfully show the Court as follows:

**GENERAL STATEMENT OF THE CASE**

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and Oklahoma law seeking redress for unlawful, discriminatory employment practices on the basis of sex, including the creation of a sexually hostile work environment, retaliation, and wrongful and constructive discharge, and, furthermore, to obtain relief for intentionally tortious and discriminatory conduct as provided under 42 U.S.C. Section 1981a.

2. Plaintiff Intervenors were each previously employed by the named Defendants, and, throughout their employment therewith, allege that Defendants engaged in conduct in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1), to wit, that Defendants, specifically Defendant Gary

Westphalen, discriminated against Plaintiff Intervenor based upon sex by subjecting them to a sexually hostile work environment, including, but not limited to, suggestive, lewd and offensive comments, generally regarding Plaintiff Intervenor's gender and/or breasts, and offensive and unwelcome touching, generally on or near Plaintiff Intervenor's breasts, shoulders, necklines and legs. The discriminatory conduct continued over Plaintiff Intervenor's objections until they were retaliatorily and/or constructively discharged.

3. Plaintiff Intervenor subsequently filed charges of discrimination with the United States Equal Employment Opportunity Commission ("EEOC" or "Commission") alleging the foregoing violations of Title VII. Upon completion of its investigation, the Commission issued its determination finding reasonable cause to believe that said violations occurred. The Commission's "Determination" letters are attached hereto for the Court's reference.

#### **JURISDICTION AND VENUE**

4. Jurisdiction and venue before this Court are proper pursuant to 28 U.S.C. §§ 1331, 1337, 1343, 1345, 1367 and 1391. This action is authorized and instituted pursuant to Section 706 of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. Section 2000e-5. The unlawful employment practices complained of herein, including the negligent and intentionally tortious conduct associated therewith, at all times were and are now being committed within the jurisdiction of the United States District Court for the Western District of Oklahoma. All conditions precedent to the institution of this action have been met.

#### **PARTIES**

5. Plaintiff EEOC is an agency of the United States which is charged with the administration, interpretation and enforcement of Title VII. In that capacity, and pursuant to 42

U.S.C. § 2000e-5(f)(1) and (3), the EEOC filed a Complaint on September 1, 2004 in the United States District Court for the Western District of Oklahoma against Defendant Westphalen Insurance Services, Inc d/b/a Westphalen Insurance.

6. Defendant Westphalen Insurance Services, Inc. d/b/a Westphalen Insurance is a wholesale insurance brokerage company which is and was at all times pertinent to the filing of this Complaint an employer engaged in an industry affecting commerce within the meaning of Title VII, 42 U.S.C. § 2000e(b), (g) and (h). At all times relevant, Westphalen has been and is now doing business in the City of Oklahoma City, State of Oklahoma, and has had at least fifteen employees.

7. Defendant Gary Westphalen is the owner and operator of the Defendant corporation Westphalen Insurance Services, and, in that capacity, supervises, manages, operates and controls said corporation. Defendant Gary Westphalen is responsible for creating and implementing the company's internal policies and procedures, including, but not limited to, the company's hiring and termination policies and the company's workplace discrimination policies. At all times relevant, Defendant Gary Westphalen subjected the Plaintiff Intervenors to the sexually discriminatory employment practices alleged herein. Defendants Gary Westphalen and Westphalen Insurance Services, Inc. d/b/a Westphalen Insurance may hereafter be collectively referred to as "Westphalen" or "Defendants."

8. Plaintiff Intervenors Terry Fitzgerald, Susan Solis and Alisha Williams are each former employees of Westphalen. As the persons on whose behalf the Commission filed suit against Defendants, Plaintiff Intervenors have an unconditional right to intervene in this case. 42 U.S.C. § 706(f)(1).

**First Cause of Action**

**Discrimination in Employment**

9. Plaintiff Intervenor's restate and incorporate herein by reference the preceding and subsequent allegations of this Complaint.

10. At all times relevant, Defendants have engaged in unlawful employment practices in violation of Title VII by subjecting Plaintiff Intervenor's to sexually suggestive, lewd and offensive comments, and by further subjecting Plaintiff Intervenor's to sexually offensive and unwelcome touching.

11. Said unlawful employment practices were intentional, and committed with malice and/or with reckless indifference to the rights of the Plaintiff Intervenor's.

12. The effect of Defendants' discriminatory conduct has been to deprive the Plaintiff Intervenor's of equal employment opportunities because of their sex, entitling Plaintiff Intervenor's to the relief set forth below.

**Second Cause of Action**

**Sexually Hostile Working Environment**

13. Plaintiff Intervenor's restate and incorporate herein by reference the preceding and subsequent allegations of this Complaint.

14. At all times relevant, Defendants have engaged in unlawful employment practices in violation of Title VII by creating, permitting and condoning a severe and pervasive sexually hostile work environment in which Plaintiff Intervenor's were subjected to and/or witnessed Defendants' sexually suggestive, lewd and offensive comments, and/or Defendants' sexually offensive and unwelcome touching.

15. Defendants failed to remedy the hostile work environment despite notice of same.

16. The effect of Defendants' discriminatory conduct has been to deprive the Plaintiff Intervenor of equal employment opportunities because of their sex, entitling Plaintiff Intervenor to the relief set forth below.

### **Third Cause of Action**

#### **Retaliation and Discharge**

17. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

18. Defendants retaliated against Plaintiff Intervenor for engaging in protected activity by harassing them, including but not limited to, eliminating workplace duties and responsibilities, and then terminating them in violation of Title VII.

19. The effect of Defendants' discriminatory conduct has been to deprive the Plaintiff Intervenor of equal employment opportunities because of their sex, entitling Plaintiff Intervenor to the relief set forth below.

### **Fourth Cause of Action**

#### **Failure to Post Discrimination Notice**

20. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

21. At all times relevant, Defendants violated Title VII by failing to post the required notice of unlawful discrimination practices and notice of procedures by which to make claims thereon as set forth at 42 U.S.C. § 2000e-10.

22. The effect of Defendants' failure to post the required notice has been to deprive the Plaintiff Intervenor of equal employment opportunities because of their sex, entitling Plaintiff Intervenor to the relief set forth below.

**Fifth Cause of Action**

**Discrimination Based on Pregnancy**

23. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

24. Title VII's proscriptions of discrimination "on the basis of sex" include employment discrimination on the basis of pregnancy, childbirth, or related medical conditions, providing that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...." 42 U.S.C. § 2000e(k).

25. Defendants subjected Plaintiff Intervenor Alisha Williams ("Williams") to sexual discrimination on the basis of pregnancy, childbirth, or related medical conditions, to wit, after becoming pregnant and advising Defendants of same, Williams' income was substantially reduced by changing her monthly salary to an hourly rate; she was initially denied insurance benefits under Westphalen's group health and disability policy when she sought leave from work in accordance with the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*; and she was subsequently terminated when complications from her pregnancy required periodic leave from work.

26. The effect of Defendants' discriminatory conduct has been to deprive Plaintiff Intervenor Williams of equal employment opportunities because of her sex, entitling her to the relief set forth below.

**Sixth Cause of Action**

**Violation of Oklahoma Law: Hostile Work  
Environment and Sexual Discrimination**

27. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

28. By subjecting Plaintiff Intervenor to a sexually hostile and discriminatory working environment as set forth above, Defendants violated Oklahoma law and public policy.

29. The effect of Defendants' discriminatory conduct has been to deprive the Plaintiff Intervenor of equal employment opportunities because of their sex, entitling Plaintiff Intervenor to the relief set forth below.

#### **Seventh Cause of Action**

##### **Violation of Oklahoma Law: Retaliatory and/or Constructive Discharge**

30. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

31. By subjecting Plaintiff Intervenor to retaliation and terminating them for engaging in protected conduct as set forth above, Defendants violated Oklahoma law and public policy.

32. The effect of Defendants' discriminatory and retaliatory conduct has been to deprive the Plaintiff Intervenor of equal employment opportunities because of their sex, entitling Plaintiff Intervenor to the relief set forth herein below.

#### **Eighth Cause of Action**

##### **Violation of Oklahoma Law: Assault and Battery**

33. Plaintiff Intervenor restates and incorporates herein by reference the preceding and subsequent allegations of this Complaint.

34. Defendant Gary Westphalen touched Plaintiff Intervenor on or about their breasts, shoulders, necklines, and/or legs without their consent to same, thereby committing an assault and battery.

35. As a result, Plaintiff Intervenor is entitled to the relief set forth below.

**Ninth Cause of Action**

**Violation of Oklahoma Law:  
Intentional Infliction of Emotional Distress**

36. Plaintiff Intervenor's restate and incorporate herein by reference the preceding and subsequent allegations of this Complaint.

37. The foregoing unlawful employment practices were intentional, and/or committed with malice and/or with reckless indifference to the rights of the Plaintiff Intervenor's.

38. The foregoing unlawful employment practices, and Defendants' knowledge of and failure to remedy same, constituted extreme and outrageous conduct which caused severe emotional distress to Plaintiff Intervenor's.

39. As a result, Plaintiff Intervenor's are entitled to the relief set forth below.

**Tenth Cause of Action**

**Violation of Oklahoma Law: Negligence**

40. Plaintiff Intervenor's restate and incorporate herein by reference the preceding and subsequent allegations of this Complaint.

41. The Defendant corporation was negligent in its hiring, training, supervision, and retention of Defendant Gary Westphalen.

42. The named Defendants were further negligent in their failure to provide their employees with appropriate notices of their rights regarding employment discrimination.

43. As a result, Plaintiff Intervenor's are entitled to the relief set forth below.

**WHEREFORE**, the Plaintiff Intervenor's respectfully request the following relief:

A. An Order granting a permanent injunction enjoining Defendants and their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates on the basis of sex;



B. An Order requiring Defendants to institute and carry out policies, practices and programs that provide equal employment opportunities for present and future employees, and which eradicate the effects of the Defendants' past unlawful employment practices;

C. An Order requiring Defendants to make whole the Plaintiff Intervenor by providing the following remedies in amounts to be determined at trial: back pay, with prejudgment interest; out-of-pocket losses and other affirmative relief necessary to eradicate the effects of Defendants' unlawful employment practices; past and future pecuniary compensatory damages; past and future non-pecuniary compensatory damages, including but not limited to damages for emotional pain and suffering, humiliation, stress, and anxiety; front pay in lieu of reinstatement; and punitive damages;

D. Plaintiff Intervenor further seek the costs of this action and reasonable attorneys fees thereby incurred; and

E. Such other legal and/or equitable relief as the Court deems appropriate.

Respectfully Submitted,

s/ Raphael T. Glapion

Edward L. White, OBA #16549

Raphael T. Glapion, OBA #19466

ATTORNEYS FOR PLAINTIFFS

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**JURY TRIAL DEMANDED**

**ATTORNEY'S LIEN CLAIMED**

**Certificate of Service**

I hereby certify that on October 12, 2004, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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